

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:15-cv-00127-FDW

ROBERT JOHNSON,
)
Plaintiff,
)
v.
)
PEGGY HICKS; JESSICA OAKS;
)
CAROL ANN PENLEY;
)
STORMI MOREFIELD;
)
MICHAEL BRASSFIELD;
)
SCOTTY WRIGHT,
)
Defendants.
)

ORDER

THIS MATTER is before the Court on an initial review of Plaintiff's *pro se* complaint that he filed pursuant to 42 U.S.C. § 1983. (Doc. No. 1). For the reasons that follow, Plaintiff's complaint will be dismissed.¹

Plaintiff is a pretrial detainee who is confined in the Watauga County Detention Center in Boone, North Carolina. In his complaint, Plaintiff alleges that the defendants, who are allegedly employees at the Watauga County Detention Center, have been threatening and harassing him as he is awaiting disposition of state criminal charges. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48, (1988) (internal citations omitted).

¹ Pursuant to 28 U.S.C. § 1915(A)(a), “[t]he court shall review . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” Following this initial review the “court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted.” *Id.* § 1915A(b)(1).

The Court notes that Plaintiff has already filed three *pro se* civil complaints in this District while he was a pretrial detainee, and in each of those cases he was allowed to proceed *in forma pauperis*, and each of those cases were dismissed for failure to state a claim. See 28 U.S.C. §§ 1915(e) and 1915A(b)(1). (Civil Case Nos. 5:14-cv-00003-RLV-DCK; 5:14-cv-00117-FDW; 5:15-cv-00124-FDW).

Because Plaintiff is seeking to proceed *in forma pauperis* in the present action, his complaint is governed by the Prisoner Litigation Reform Act which provides, in pertinent part, as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

Because Plaintiff cannot demonstrate that he is in danger of imminent physical injury, he is required to pay the full filing fee before his case may proceed. Furthermore, because he has tendered no funds with his complaint, it will be dismissed.

For the foregoing reasons, the Court finds that Plaintiff has failed to state a claim upon which relief can be granted and his complaint will be dismissed.

IT IS, THEREFORE, ORDERED Plaintiff's complaint is **DISMISSED**.

The Clerk is respectfully directed to close this civil case.

SO ORDERED.

Signed: October 19, 2015



Frank D. Whitney
Chief United States District Judge

